

Appl. No. : 10/791,353  
Filed : March 2, 2004

### REMARKS

#### Acknowledgement of Allowable Subject Matter

Applicant acknowledges the indication that Claims 29 and 30 have been allowed and that Claims 2-8, 14-20, 24, 25, 32 and 33 contain allowable subject matter.

To the extent the Examiner's reasons for allowance indicate that the claims were allowed solely on the basis of the limitations reproduced therein, Applicant disagrees and submits that it is the each of the claims as a whole that is allowable.

Applicant has rewritten Claims 14 and 32 into the independent Claims 13 and 31, from which Claims 14 and 32 originally depended, while canceling Claims 14 and 32. Allowance of Claims 13, 15-28, 31 and 33 is respectfully requested.

#### New Claims 35 and 36

New Claims 35 and 36 are Claims 24 and 25 rewritten into independent form. Allowance of these claims is respectfully requested.

#### Claims 1 and 9-12 Are Patentable

Claims 1 and 9-12 have been rejected as unpatentable over Izumi in view of Nakamura. Applicant respectfully believes Claim 1 to recite limitations that were not taught or suggested by either reference alone or by the combination of the two references. Thus, Applicant maintains that Claims 1 and 9-12 are patentable.

Claim 1 is the sole independent claim of Claims 1 and 9-12. Claim 1 recites, among other limitations, a switching system adapted to allow an operator to select among only the following combinations of modes for the front and rear differentials: front disabled and rear unlocked; front disabled and rear locked; front unlocked and rear unlocked; front unlocked and rear locked; and front locked and rear locked. Thus, the system does not allow a user to select the combination of front locked and rear unlocked.

Assuming but not admitting that together Izumi and Nakamura disclosed all of limitations other than a switching system in which all modes were available except for front locked and rear unlocked and assuming but not admitting that there is a motivation to properly combine the teachings, the issue then becomes whether or not either Izumi or Nakamura taught or suggested a switching system in which not all available modes of operation were used.

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The Examiner stated that Izumi did not provide such a teaching but only taught a front and rear lockable differential<sup>1</sup>. Thus, Nakamura must be the basis for such a teaching if the rejection is proper. The Examiner stated that Nakamura disclosed a switching system to select different locking modes of a differential to provide the associated vehicle with greater traction control.

It is true that Nakamura taught a control system for controlling the locking of a differential. It is also true that Nakamura taught a lockable front differential. Nakamura, however, is silent about the using less than all possible operational modes of a lockable differential. Nakamura was capable of operation in two wheel drive (differential locked and differential unlocked) or four wheel drive (differential locked or unlocked). Of course, in two wheel drive, locking the differential had no impact on operation of the vehicle since the front wheels disconnected from the engine by a dog clutch configuration but the system allowed this mode to be selected. If the control system of Nakamura were applied to both a front differential and a rear differential, then the combination of a locked front differential and an unlocked rear differential would be included in the available combinations provided by such a system.

Accordingly, assuming but not admitting that both differentials of Izumi were disclosed to be lockable and that the control system of Nakamura were used to control both differentials, there is no teaching in either reference to limit the available operational options to the five recited by Claim 1. While the Examiner attempts to remedy this shortcoming in the teachings with an argument that "adapted to" only requires that the structure taught by the applied combination have the ability to perform the recited function, this argument does not address the failure of the applied combination to provide any teaching or suggestion of a system that is capable of the limited modes of operation reflected in the recited limitations<sup>2</sup>. It is immaterial that a

<sup>1</sup> Col. 3, lines 44-45 states: "In the embodiment illustrated, there is but a single rear axle 52 to which both of the rear wheels 48 are mounted." Col. 3, lines 60-61 states: "As illustrated, a rear differential or gear box 82 is supported by the axle 52 and a rear trailing arm 86." Col. 4, lines 8-10 states: "The input shaft 100 extends to the rear differential 82, where the rotation thereof is transmitted to the rear axle 52, turning the rear wheels." Applicant disagrees that these three quotes teach or suggest a lockable rear differential.

<sup>2</sup> The Attachment A indicated by the Examiner as enclosed to better support the office position was not enclosed with the Office Action. Thus, Applicant did not have the benefit of such an attachment in understanding the office position.

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combination of a front and rear lockable differential may be adapted to operate in the recited manner. There is no suggestion or teaching to use only five of the eight variations available.

Because the Examiner has not provided any teaching or suggestion in the prior art of a system in which at least one of the operating combinations is omitted (e.g., front locked and rear unlocked), the Examiner has not provided a teaching or suggestion for each of the recited limitations of Claim 1. Thus, a prima facie case of obviousness has not been provided and Claim 1 is allowable over the applied combination.

Claims 9-12 recite further patentable distinctions and also are allowable over the applied combination. Specifically, each of these claims recites structural features that are not taught or suggested by either reference. Thus, these claims also are allowable over the applied combination.

#### Claim 34 Is Patentable

Claim 34 has been rejected as anticipated by Hueckler et al. Applicant disagrees that Hueckler et al. disclosed each limitation of Claim 34.

As amended, Claim 34 recites, among other limitations, the front differential mechanism being allowed to enter the locked mode only when the rear differential mechanisms is in the locked mode and a switching system adapted to allow an operator to independently select a desired operational mode for each of the front differential mechanism and the rear differential mechanism.

Hueckler et al. failed to disclose such an arrangement. In particular, Heuckler et al. failed to disclose an arrangement having differentials that allow independent selection by an operator or that limit the locking of the front differential to instances in which the rear differential is already locked or is simultaneously locking. Thus, Claim 34 is not anticipated by Heuckler.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped

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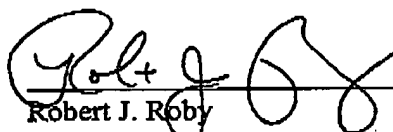
issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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